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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. —

CHARLES T. DOUDS, REGIONAL DIRECTOR OF THE SECOND REGION OF THE NATIONAL LABOR RELATIONS BOARD, FOR AND ON BEHALF OF THE NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, AND LOCALS 856, 824, 874, 895, 920, 975 AND 1258, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, WILLIAM P. LYNCH, SECRETARY-TREASURER OF LOCAL 791, HAROLD BOWERS, SECRETARY OF LOCAL 824; AND WILLIAM ACKALITIS, BUSINESS AGENT OF LOCAL 874

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered on June 24, 1955, reversing the judgment of the District Court for the Southern District of New York, imposing fines and prison sentences upon respondent unions and three of their officers for criminal contempt in violation of an order of the District Court entered on March 4, 1954, in a proceeding under Section 10 (l) of the National Labor Relations Act, as amended.

OPINION BELOW

The opinion of the court below (App. A, *infra*, pp. 26–36) is not officially reported.

JURISDICTION

The judgment of the court below was entered on June 24, 1955 (App. A, *infra*, p. 37). Petitioner's petition for rehearing was denied on July 22, 1955 (App. A, *infra*, p. 38). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Respondent unions, in retaliation against a rival union in the course of a struggle over the representation of employees for collective bargaining purposes, directed the employees of employers doing business with carriers whose trucks were driven by members of a union affiliated with the rival union, to cease performing services in connection with those trucks. The primary question is whether such concerted refusal to perform services constitutes a violation of Section 8 (b) (4) (A) in view of the fact that the respondents' ultimate objective was to gain representation rights, and the cessation of business between the carriers and their employer customers was an incidental and intermediate object.

2. Whether a restraining order, couched in the language of the statute, which respondents were alleged, and found by the district court, to have contumaciously disobeyed, should be read, as the court below held, solely by reference to the order

itself, or in the light of the pleadings, issues and showing made before the issuing court, in order to determine whether it was directed against the conduct giving rise to the contempt proceedings.

STATUTE INVOLVED

The principal statutory provision involved is Section 8 (b) (4) (A) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., 151, 158 (b) (4) (A)) which, together with Section 10 (l) of the Act, is set forth in Appendix B, *infra,* pp. 39–40.

STATEMENT

I. THE EVENTS LEADING TO THE ISSUANCE OF THE TEMPORARY RESTRAINING ORDER BY THE DISTRICT COURT

In September 1953, the International Longshoremen's Association (herein called ILA), which for years had been affiliated with the American Federation of Labor (herein called AFL), was expelled from the AFL. A new organization was immediately chartered by AFL to compete with ILA for the representation of longshoremen (I–213, II–1253;[1] see *United States* v. *Inter-*

[1] The record consists of the printed appendix to respondents' (appellants below) brief in the court below, the typewritten transcript of testimony and exhibits introduced in evidence. Roman numerals followed by arabic numerals are references to the volume and pages, respectively, of the typewritten transcript of testimony; references to the respondents' printed appendix are designated "A. A." and exhibits put in evidence by petitioner and respondents are designated, respectively, "Pet. Ex." and "Resp. Ex."

national Longshoremen's Association, 116 F. Supp. 262, 264 (S. D. N. Y.)). The new organization, designated American Federation of Labor-International Longshoremen's Association (herein called AFL-ILA), immediately commenced organizational activities, and many members of the old ILA, and in some instances entire locals, transferred their affiliation to the new AFL-ILA (I–842, III–32, 33). On October 1, 1953, respondent ILA and its affiliated locals struck the East Coast, including the Port of New York, partly because of an impasse with employers over contract terms and partly to offset the ILA-AFL's challenge to its representative status (III–22, 24). On October 5, the Attorney General of the United States, pursuant to the national emergency provisions of Section 208 of the Act, secured an 80-day injunction against the strike (III–24–25). The strike terminated with the issuance of the injunction (III–25–26).

On October 8, 1953, AFL-ILA filed a petition with the National Labor Relations Board for certification as the exclusive bargaining representative of the longshoremen employed in the Port of New York (III–131–132). On December 23 and 24, 1953, the Board conducted an election to determine whether the old ILA or the new AFL-ILA, or neither, was the majority representative of these employees (Pet. Ex. 41). The election did not result in the certification of a representative because objections to the election were filed by the

AFL-ILA, alleging, *inter alia*, that there had been violence and intimidation in connection with the polling in Brooklyn (III–152–154).[2] Hearing on these objections was ordered by the Board and was in progress (III–152) when the following events occurred.

William McMahon, a longshoreman who for many years worked on Pier 32, North River, for Moore-McCormack Lines, Inc. (herein called Moore-Mac), was among those who switched to AFL-ILA in October 1953 (I–100–101, 102). Prior thereto he had been a shop steward of ILA Local 895 (I–100, 101). Because of McMahon's transfer to AFL-ILA, ILA struck Pier 32 and Moore-Mac thereupon terminated McMahon's employment (I–102–103). About 4 months later, however, on February 23, 1954, AFL-ILA prevailed upon Moore-Mac to rehire McMahon to work on Pier 32 (I–105–106). On learning of this that same afternoon, ILA again struck Pier 32 and its members employed there remained away from work on February 24 and 25 while McMahon worked (I–106–107). On February 25, Moore-Mac again discharged McMahon at the request of ILA and the latter's members returned to work (I–108–113). On February 26, 1954, McMahon commenced picketing Pier 32, and as a result AFL truck drivers, principally members

[2] The Board subsequently, on April 1, 1954, found merit to the objections, set the election aside, and ordered a new election (Pet. Ex. 43).

of Local 807, International Brotherhood of Teamsters, Chauffeurs and Warehousemen of America, AFL (herein called Teamsters Local 807), refused to cross McMahon's picket line to make deliveries or pick-ups (I–114).[3]

In retaliation against the AFL for the Pier 32 picketing and the refusal of truck drivers to cross the picket line, ILA, on the same day, February 26, 1954, instructed its members employed throughout the Port of New York to refuse to load or unload any trucks driven by members of Teamsters Local 807 (III–54–57). There was general compliance with these instructions and the result was a paralysis of commerce in the Port affecting employers wholly unconnected with the dispute at Pier 32 (I–223). On February 27, 1954, the New York Shipping Association[4] filed a charge with the Board alleging that ILA, by its instructions to its members to refuse to load and unload trucks driven by members of Teamsters Local 807, was violating Section 8 (b) (4) (A) of the National Labor Relations

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[3] Teamsters Local 807 is the largest of the Teamsters locals in the Port of New York area and its members do most of the hauling to and from the piers (III–56).

[4] The New York Shipping Association, whose members employ most of the longshoremen in the Port of New York, is an employer group of approximately 170 companies which operate steamship lines, stevedoring companies, warehouses and related enterprises involving the transportation of cargo and passengers into and out of the Port of New York.

Act, as amended. The charge was later amended to include eight of ILA's local unions as respondents.

Although requested to do so, ILA refused to withdraw its aforesaid instructions or to discontinue its "boycott" of trucks driven by Teamsters Local 807 drivers (V–1587). Accordingly, on March 4, 1954, petitioner, pursuant to Section 10 (l) of the Act (29 U. S. C. 160 (l)), filed with the United States District Court for the Southern District of New York a verified petition (together with supporting exhibits and affidavits setting forth with particularity ILA's refusal to serve Local 807 trucks) alleging, in sum, that there was reasonable cause to believe that respondents' conduct was in violation of Section 8 (b) (4) (A) of the Act and praying for the issuance of a temporary restraining order pending a hearing on the petition for an injunction against said conduct (A. A. 14–20). Thereupon, on March 4, 1954, the district court (A. A. 20–22), finding that on the petition, exhibits and affidavits before it, there was "reasonable cause to believe" that ILA and eight locals had violated Section 8 (b) (4) (A) of the Act, issued, as prayed in the petition, a temporary restraining order restraining them and all persons acting in concert with them, from:

> Engaging in, or, by orders, directions, instructions, appeals, or other means, or by permitting any such to remain in exist-

ence or effect, inducing or encouraging the employees of members of New York Shipping Association and of other employers to engage in, strikes or concerted refusals in the course of their employment, to use, process, transport or otherwise handle or work on any goods, articles, materials or commodities, or to perform services for their employers, where objects thereof are (1) to force or require members of New York Shipping Association and other employers to cease doing business with trucking concerns employing members of Local 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and (2) to force or require customers of trucking concerns employing members of Local 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, to cease doing business with said trucking concerns; * * *

II. THE CONTEMPT PROCEEDINGS AND CONVICTIONS

The restraining order was issued on the afternoon of March 4, 1954, in the presence of counsel for ILA (A. A. 23). That same afternoon, the official printer of ILA (II–1122) printed and delivered picket placards bearing ILA's official insignia and the legend: "ILA-Independent Members Being Discriminated Against" (Pet. Ex. 1, II–1130). That evening, the longshoremen employed at Pier 88, North River, in the juris-

diction of respondents ILA Local 824 and Bowers, walked off the job in protest against the issuance of the temporary restraining order (VI–2436–2437, 2463–2464, 2510). The following morning, Friday, March 5, 1954, the longshoremen represented by ILA and its local unions at other docks also joined in the strike (I–235, III–89, 90, 215, 217, 322–323, V–1515) in protest against the issuance of the temporary restraining order (IV–377–378, 783, 1069), and pickets appeared at the docks in Manhattan and Brooklyn carrying the above picket signs (I–246, 839, 877, 957, II–1288, VII–2880–2881, Pet. Ex. 24, 50). By Monday, March 8, 1954, most of the Port was shut down, with ILA members and agents picketing at the docks and other installations in the Port (I–246, 249, 250, 251, 252, 664, 668, 671–674, 819, 925–926, 943, III–237). On or about March 24, 1954, ILA publicly announced "official" adoption of the strike (III–69) which allegedly had theretofore been engaged in contrary to its instructions. The strike continued thereafter until April 3, 1954, and ended promptly when Captain Bradley, president of ILA, ordered the longshoremen to return to work (V–1573). Even then, ILA did not terminate the strike in order to comply with the court's restraining order, but because the Board's decision which set aside the December election indicated that a continuation of the strike might bar ILA from a place on the ballot in the new elec-

tion ordered by the Board (Pet. Ex. 43). Thus, the strike, which paralyzed commerce in the Port of New York, lasted for a period of 29 days, 25 of which were after the petition to adjudicate respondents in contempt was filed in the district court (I–789, V–1570).[5]

On March 9, 1954, petitioner filed a petition in the district court alleging that the strike and picketing constituted civil and criminal contempt of the restraining order by ILA, eight of its local unions and three officers of the locals (A. A. 27–34). Upon respondents' application, the district court ordered the civil and the criminal contempt cases tried together, with only the criminal contempt charges to be submitted for the jury's consideration.

At the trial respondents contended that the strike was the spontaneous action of their members which respondents neither authorized nor condoned, and which they sought to avoid and to terminate, but without success. Respondents further contended that the objects of the strike which commenced on March 4 and 5 were to secure a contract from the New York Shipping Association

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[5] As a result of the strike at the Port of New York, ships were directed to the ports of Boston, Philadelphia and Baltimore. There, ILA longshoremen refused to unload these vessels. Charges were filed with the Board alleging that such conduct violated Section 8 (b) (4) (A). The refusal to unload these vessels ceased after injunctive proceedings were instituted on behalf of the Board, pursuant to Section 10 (l), in the appropriate district courts.

and to obtain certification by the Board, objects different from those proscribed by the temporary restraining order. Respondents also denied knowledge of the terms of the restraining order. These contentions were submitted by the trial judge to the jury with appropriate instructions (A. A. 38–39, 69–70). The trial judge (A. A. 46) instructed the jury, *inter alia,* that if the general strike which followed the issuance of the temporary restraining order "was merely a subterfuge, which announced a new and legal purpose to lend color of legality to the real underlying purpose of the strike, if in reality it sought to carry on and accomplish the same illegal purpose of the secondary boycott of 807 trucks by indirection, which the Court order had enjoined, then it was an illegal strike." The jury returned a verdict of guilty as to each respondent. The trial judge thereupon imposed fines upon the nine unions totalling $92,500 and imposed jail sentences of 3 to 6 months on the individual respondents (A. A. 3–13). Respondents appealed to the court below from the orders imposing prison sentences and fines.[6]

III. THE DECISION OF THE COURT BELOW

The court below (*infra,* pp. 26–36), Judge Swan dissenting, reversed the district court's judg-

[6] One of the respondents named in the proceedings in the district court, Local 791, did not file timely notice of appeal to the court below.

ments convicting respondents for criminal contempt. Assuming, in accordance with the jury's finding, that the general strike which followed issuance of the restraining order was "a subterfuge to cover the refusal [to serve trucks driven by Local 807 members]" (*infra,* p. 31), the court below nonetheless ruled that the refusal itself was not violative of Section 8 (b) (4) (A) of the Act. The court noted that respondents' "refusal to serve the trucks was a reprisal and retaliation against the '807' drivers," and more fundamentally, therefore, a "step * * * in the contest for control of the Port," and concluded that because of this circumstance respondents' conduct lacked the prerequisites of a "secondary boycott" which it assumed to be the purpose of Section 8 (b) (4) (A) to outlaw (*infra,* pp. 31–32). In explanation, the court below observed that a " 'secondary boycott' in the usual meaning of that term," presupposes a strike against a neutral employer to force discontinuance of relations with a different employer who is involved in a labor dispute, thereby "putting pressure on the [latter] to come to terms with his own employees" (*infra,* p. 32). The court below acknowledged that "Section 8 (b) (4) (A) does indeed go further than that," for, as shown by cases in which this Court has upheld findings of violations, it also encompasses strikes where the purpose was not simply to "help * * * the em-

ployees of another employer in a dispute between them and him," but with the "'object' * * * to promote the general solidarity of unionism" (*infra*, p. 32).[7] As the court viewed this case, however, respondents' conduct was not calculated either to assist other employees or the cause "of unionism in general" (*infra*, p. 33); rather, the refusal to serve trucks driven by members of Local 807 was to *"advance* [*respondents'*] *own cause in a dispute with another to gain representation"* (*infra*, pp. 32–33).

The question then, as the court below viewed it, was whether respondents' refusal to serve trucks driven by Local 807 members and the consequent disruption of business relations between members of the Association and carriers employing members of Local 807, neither of whom was involved in disputes with its respective employees, fell within the coverage of Section 8 (b) (4) (A), where the underlying or ultimate object of the refusal was the advancement of respondents' own interests in "the contest for control." The court answered the question in the negative in spite of the fact that, as the court conceded, a cessation of business between employer-members of the Association and carriers

[7] *National Labor Relations Board* v. *Denver Building & Construction Trades Council*, 341 U. S. 675; *International Brotherhood of Electrical Workers* v. *National Labor Relations Board*, 341 U. S. 694; *Local 74, United Brotherhood of Carpenters* v. *National Labor Relations Board*, 341 U. S. 707.

employing members of Local 807 "was one of the probable, nay inevitable, consequences of the refusal" (*infra*, p. 33). As explained by the court, the "object" of strikes or refusals to perform services which is prohibited by Section 8 (b) (4) (A) refers to (*infra*, pp. 33–34):

> * * * the concluding state of things that the actor seeks to bring about: that which satisfies his aim. Hence it is a term relative to the whole sequence of steps that he proposes; and it does not apply to those that are only intermediate to it.

The court concluded that since respondents' refusal to perform services in connection with Local 807 trucks "appears inevitably" to have been "part of the struggle for control of the Port, that was the only 'object' in the sense that that term is used in the section" (*infra*, pp. 34, 35, 36); accordingly, in the court's view, respondents' conduct was not shown to have been for the object proscribed by the Act.[8]

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[8] In reaching its decision the court below noted that there was a further question of whether, "even though the 'object' of [respondents'] refusal had been to break up the business of the 'Association' or the 'customers' with the trucking companies," there would be a violation of Section 8 (b) (4) (A). For here, unlike the situation in the usual case involving Section 8 (b) (4) (A) which has come before the courts, "the cessation of business between third parties is brought about without the mediation of one of the parties affected" (*infra*, p. 35). Finding that it was unnecessary to pass on this question, the court expressly left it "undetermined" (*ibid.*). Cf. *National Labor Relations Board* v. *Washington-Oregon Shingle Weavers' District Council*, 211 F. 2d 149 (C. A. 9).

The court below also ruled that the adjudication of contempt could not be upheld on the ground that respondents had disobeyed the restraining order, which, as the court observed, they were not entitled to do regardless of whether the order "was right or wrong". Finding that the restraining order "followed the language phrase" of Section 8 (b) (4) (A), the court concluded that this "left open what meaning the [district] court ascribed to the words that had been lifted without change from the section," and that accordingly "we must assume that no more was forbidden than the section itself forbade" (*infra*, pp. 35–36).

REASONS FOR GRANTING THE WRIT

1. The decision of the court below turns on the meaning it attributes to the critical term "object" as used in the statutory prohibition against strikes or refusals to handle goods or perform services "where an *object* thereof is * * * forcing or requiring any employer * * * to cease doing business with any other persons" (italics added). Thus, the court assumes that there would have been a violation of the Act if respondents' "refusal to serve the trucks was merely to cause a cessation of business between the 'Association' and the trucking companies, or between those companies and their customers" (*infra*, p. 34), but holds that no violation was committed because such cessation of business,

though "known and intended", was "only intermediate" to respondents' ultimate object of winning representation rights (*infra*, p. 34). According to the court, the statutory term "object" applies only to the latter—the final objective, as distinct from the intermediate, though incidental objectives, which union conduct is intended to achieve.

The interpretation thus given Section 8 (b) (4) (A) constitutes, we think, an erroneous and significant departure from the decisions of this Court, other courts of appeals, and the Board. In *National Labor Relations Board* v. *Denver Building & Construction Trades Council*, 341 U. S. 675, this Court, in reversing the judgment of the court of appeals, specifically rejected the court of appeals' reading of Section 8 (b) (4) (A), now advanced by the court below, that where the ultimate "purpose of the [union] was to render the particular job all union," a strike at the job site to protest the presence of nonunion employees of a subcontractor was not for the "object * * * in any literal sense to require [the general contractor of the job] to cease doing business with [the nonunion subcontractor]." 186 F. 2d 326, 335 (C. A. D. C.). For, as stated by this Court, it was enough to establish a violation that "in order to attain its ultimate purpose [the union], must have included among its objects that of forcing [the general contractor] to terminate that subcontract." 341 U. S. at 688. And,

as this Court added, Section 8 (b) (4) (A) does not require a finding "that the *sole* object of the strike" is the cessation of business between employers. *Id.*, at 689. See also, 93 Cong. Rec. 6859. Similarly, it has uniformly been held by the courts of appeals that a violation of Section 8 (b) (4) (A) is established where a union, in support of its ultimate objective of prevailing in a labor dispute with an employer, induces employees of other employers to strike their employer, with the calculated "intermediate" objective of causing a cessation of business between the latter employer and the employer involved in the dispute. See, e. g., *National Labor Relations Board* v. *Denver Building and Construction Trades Council,* 219 F. 2d 870 (C. A. 10); *Piezonki* v. *National Labor Relations Board,* 219 F. 2d 879 (C. A. 4); *National Labor Relations Board* v. *Teamsters Local No. 135,* 212 F. 2d 216 (C. A. 7); *National Labor Relations Board* v. *United Brotherhood of Carpenters,* 184 F. 2d 60 (C. A. 10), certiorari denied, 341 U. S. 947; *National Labor Relations Board* v. *Wine, Liquor & Distillery Workers Union,* 178 F. 2d 584 (C. A. 2). Cf. *National Labor Relations Board* v. *Washington-Oregon Shingle Weavers' District Council,* 211 F. 2d 149 (C. A. 9).

The attempt of the court below to distinguish *National Labor Relations Board* v. *Denver Building and Construction Trades Council* and its com-

panion cases is unavailing. The asserted difference in the object of the strikes in the two cases—the promotion of general "union solidarity" in the *Denver* case and the advancement of the union's own cause in the instant case—overlooks the fact, recognized in this Court's opinion in the *Denver* case, that the striking labor organization there had as its ultimate object control over all construction jobs, a purpose which, like that in this case, worked primarily to its own benefit. Moreover, in both *International Brotherhood of Electrical Workers* v. *National Labor Relations Board,* 341 U. S. 694, and *Local 74, United Brotherhood of Carpenters* v. *National Labor Relations Board,* 341 U. S. 707, decided at the same time as the *Denver* case, the unions found to have violated Section 8 (b) (4) (A) plainly had the object of advancing their own interests in having their members awarded the jobs in question.[9] These cases make clear that a purpose of serving one's own cause affords no immunity from Section 8 (b) (4) (A) so long as the foreseeable consequence or "an object" of the prohibited conduct, whether ultimate or im-

[9] Although the employees who were induced to walk off the job in the *Electrical Workers* case may have done so in order to assist members of a different craft or to promote the solidarity of unionism, their "object" is not controlling; rather, whether Section 8 (b) (4) (A) is violated turns on the object of persons charged with its violation—in the *Electrical Workers* case, the union which induced carpenters to walk out.

mediate, is the cessation of business between employers.

The legislative history of Section 8 (b) (4) (A) confirms this view. The Report on the Senate bill, from which the present Section is derived, states that this provision was intended, *inter alia,* to prohibit the kind of activity which, as described in testimony before the Senate Committee, Local 3, IBEW had carried on in the New York City area. S. Rep. No. 105, 80th Cong., 1st Sess., p. 22. Thus, as pointed out in the Senate Report (*ibid.*), in its effort to increase the number of jobs available to its members and improve their working conditions, Local 3 had followed the practice of refusing to install electrical products of manufacturers whose employees were not members of that union. See *Allen Bradley Co.* v. *Local 3, IBEW,* 325 U. S. 797, 799–800. The fact that Local 3 plainly had as its ultimate object the self-benefiting purpose of improving the economic conditions of its members, and, indeed, the fact that there was no active labor dispute between Local 3 and any of the nonunion manufacturers in no way detracted from Congress' expressed determination to prohibit such refusal to perform services where the foreseeable result, albeit an intermediate objective, was the cessation of business between the two groups of employers. After all, the basic Congressional purpose in enacting Section 8 (b) (4) (A) was to guard

against the conscription of employers into labor disputes which did not concern them, whatever ultimate objective the union may seek to advance. To achieve this objective Congress banned all strike action directed against, or which has the effect of injuring, the business of third persons not involved in the basic disagreement giving rise to the conflict. 93 Cong. Rec. 3835, 4198. The Act "broadly sweeps within its prohibition an entire pattern of industrial warfare deemed by Congress to be harmful to the public interest." *Printing Specialties, etc. Union* v. *LeBaron,* 171 F. 2d 331, 334 (C. A. 9). By interpreting Section 8 (b) (4) (A) to immunize secondary pressure on neutral employers wherever a union can establish that its ultimate purpose is the advancement of its own cause, the decision below goes far in thwarting the Congressional objective and removing from the scope of an important provision of the Act an extensive area of conduct which Congress intended to forbid.

2. The decision below, if it stands, undoubtedly will have an important impact upon the administration of Section 8 (b) (4) (A) and the related provision of the Act, Section 10 (l),[10]

[10] Section 10 (l) provides in substance (*infra*, pp. 39–40) that whenever, upon charges alleging, *inter alia*, violations of Section 8 (b) (4) (A), the officer or regional attorney of the Board investigating the charges has reasonable cause to believe that the charges are meritorious, he shall, on behalf of the Board, petition the appropriate district court for injunctive relief pending the final adjudication of the Board with respect to such matter.

generally, and particularly in the district courts within the jurisdiction of the court below where injunction proceedings under Section 10 (l) are instituted. In this connection, it should be noted that, for example, during the fiscal year ending in June 1955, approximately 300 charges were filed with the Board alleging violations of Section 8 (b) (4) (A). Approximately 60 of these charges were deemed by the investigating officer to have merit so as to require invocation of the mandatory provisions of Section 10 (l) for interlocutory injunctive relief in the district courts. Approximately one-third of these cases originated, and proceedings for injunctive relief were brought in the district courts, within the jurisdiction of the court below. It would seem apparent from the foregoing that the decision below will play a significant role in future litigation under Sections 8 (b) (4) and 10 (l) of the Act, particularly in the district courts in the Second Circuit.

The importance of the decision below is further emphasized by the practical aspects of litigation under Section 8 (b) (4) (A) and Section 10 (l). Experience demonstrates that frequently the denial of injunctive relief under Section 10 (l) marks the end of the unfair labor practice proceedings generally. In such instances, the employers are often inclined to yield to such "secondary" pressures, "make their peace" with the

union, and request the Board to permit withdrawal of the charges initiating the proceedings. Although the Board need not permit withdrawal of the charges, nevertheless the consequence often is that the proceedings are, for all practical purposes, ended and the vindication of an important national policy effectively thwarted. The decision below, which in the Board's view may seriously restrict what Congress deemed to be perhaps the most significant amendment to the Act, can only serve to intensify this situation.

Finally, it may be noted that the rivalries which gave rise to the instant proceedings still persist. Respondent International and its affiliate locals represent substantially all of the dock workers on the Atlantic and Gulf Coasts and on the Great Lakes. A recurrence of retaliatory strike action against the ILA-AFL in these various localities would create the danger of a paralyzing effect upon the national economy. It is important, in the Board's view, to determine whether such strike activity, having serious adverse consequences, is a type of conduct against which the Nation can guard through Section 8 (b) (4) (A) and Section 10 (l).[11]

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[11] Waterfront disputes, of which the instant case is one, have been a perennial source of strife of such importance to the national economy as repeatedly to call for state and federal action. Thus, for example, in 1950 a strike called by the ILA on the Great Lakes prompted the President to

3. The second question presented tests the applicability to this case of the settled rule, recognized by the court below, that the district court's restraining order "had to be obeyed, whether it was right or wrong" (*infra*, p. 35).[12] If the order encompassed respondents' refusal to service trucks driven by members of Local 807, there is no question but that the contempt adjudication should be upheld, for the jury found that respondents continued their refusal after issuance of the order.

In reading the district court's order to be coextensive in its coverage with the statutory language it paraphrased, the decision of the court below again reflects a serious departure from settled law. For, as this Court has stated, "The nature and extent" of an injunction is to be

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declare a national emergency and to appoint a Board of Inquiry. Ex. Orders 10138 and 10139. In 1954 a longshoremen's strike in the New York Port led the State of New York to appoint a Board of Inquiry to investigate the strike. In October 1953, as a result of a strike on the East Coast called by the ILA, the President declared a national emergency and the Federal Government obtained an 80-day injunction against the strike (see *supra*, p. 4). In 1951 the Governor of the State of New York appointed a crime commission to investigate employment conditions of longshoremen in the Port of New York. As a result of the findings of this commission, New York and New Jersey entered into a compact, subsequently approved by Congress, regulating employment of longshoremen in the Port. See *Linehan* v. *Waterfront Commission*, 347 U. S. 439.

[12] See *United States* v. *United Mine Workers*, 330 U. S. 258, 293; *Maggio* v. *Zeitz*, 333 U. S. 56, 69.

determined "upon an examination of the issues made and intended to be submitted and what the decree was really designed to accomplish." *Vicksburg* v. *Henson,* 231 U. S. 259, 273. See also *Oklahoma* v. *Texas,* 256 U. S. 70, 88, 272 U. S. 21, 42–43; *National Labor Relations Board* v. *Edward G. Budd Mfg. Co.,* 169 F. 2d 571, 575 (C. A. 6); *Larkin Packer Co.* v. *Hinderliter Tool Co.,* 60 F. 2d 491, 494 (C. A. 10). Only by failing to apply this settled principle could the court below avoid the conclusion that the restraining order encompassed the conduct upon which the contempt conviction was based. For the pleadings, the issues and the showing made before the district court at the time it signed the restraining order, and indeed, as the court below apparently conceded (*infra,* p. 30), the understanding of the parties at that time, clearly indicate that the order was directed specifically at respondents' refusal to service trucks driven by Local 807 members (See A. A. 14–22, and affidavits attached to original Petition for Injunction).

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

SIMON E. SOBELOFF,
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THEOPHIL C. KAMMHOLZ,
General Counsel,
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AUGUST 1955.

APPENDIX A

United States Court of Appeals for the Second Circuit

No. 292. October Term, 1954

Argued May 12, 1955. Decided June 24, 1955

Docket No. 23491

CHARLES T. DOUDS, REGIONAL DIRECTOR, PETITIONER

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, ET AL., RESPONDENTS

Before HAND, SWAN and FRANK, *Circuit Judges*

On appeal from an order of the District Court for the Southern District of New York (Burke, J., presiding), imposing a sentence of imprisonment and fine upon the respondents in a criminal proceeding to punish them for disobedience of an order of the District Court, entered in a proceeding under § 10 (l) of the Labor-Management Relations Act.[1]

HAND, *Circuit Judge.*

This is an appeal by the respondents—three individuals, the "International Longshoremen's Association, Independent," and eight of its

[1] § 160 (l) of Title 29, U. S. Code.

"Locals"—from an order of Judge Burke, imposing prison sentences and fines as punishment for contempt of an order of the District Court for the Southern District of New York, issued on March 4, 1954, in a proceeding brought by the petitioner, Douds, as Regional Director of the National Labor Relations Board under § 10 (l) of the Labor-Management Relations Act.[1] We quote in the margin the relevant parts of the order.[2] The contempt proceeding was begun by

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[1] § 160 (l) of Title 29, U. S. Code.

[2] Now, therefore, upon the above, it is ordered that respondents International Longshoremen's Association, Independent, and Locals 791, 856, 824, 874, 895, 920, 975 and 1258, International Longshoremen's Association, Independent, and each of them, their agents, servants, employees, attorneys and all other persons in active concert or participation with them, be and they hereby are enjoined and restrained until March 9, 1954, at 5:00 p. m., and not longer, without further order of this Court, from:

"Engaging in, or, by orders, directions, instructions, appeals, or other means, or by permitting any such to remain in existence or effect, inducing or encouraging the employees of members of New York Shipping Association and of other employers to engage in, strikes or concerted refusals in the course of their employment, to use, process, transport or otherwise handle or work on any goods, articles, materials or commodities, or to perform services for their employers, where objects thereof are (1) to force or require members of New York Shipping Association and other employers to cease doing business with trucking concerns employing members of Local 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and (2) to force or require customers of trucking concerns employing members of Local 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, to cease doing business with said trucking concerns; * * *"

an order to show cause, upon the return of which the respondents filed answers; and the issues so arising were tried to a jury, which returned a verdict against the respondents, on which the court imposed the sentences in question. We shall speak of the respondent, "International Longshoremen's Association, Independent," as the "Independent;" of "Local 807," a truck drivers' affiliate of the "American Federation of Labor," as "807;" of the New York Shipping Association as the "Association;" and the "American Federation of Labor" as "AFL."

In 1953 the "Association" was a combination of about 170 employers in the Port of New York who operated steamships, stevedoring companies, warehouses and the like. The "Independent," a longshoremen's labor union, had been preceded by an earlier union of the same name which was an affiliate of "AFL," and consisted of a group of "locals," comprising substantially all the longshoremen in the Port. For reasons not here relevant, in the fall of that year "AFL" expelled this affiliate, and chartered in its stead another longshoremen's union, which was an affiliate, which we shall speak of as "AFL–ILA," and which at once began to try to draw members away from the "Independent" in the hope of getting itself certified as the representative of all the longshoremen in the Port. On October 1 the "Independent," not being able to come to any agreement with the "Association," called a longshoremen's strike, which the district court enjoined for 80 days under § 208 of the Labor-Management Relations Act upon the motion of the Attorney General. In obedience to that order

the "Independent" went back to work; but "AFL–ILA," believing that it had secured the adherence of a majority of the longshoremen, filed a petition with the Labor Board for certification as their representative. An election was held on December 23 and 24, at which the "Independent" got a majority; but the Board refused to grant it a certificate because of the methods that "AFL–ILA" alleged it to have employed. While the Board was conducting hearings on these objections, the district court on March 4, 1954 granted ex parte the injunction, whose disobedience was the subject of the prosecution now at bar.

The occasion for that injunction was as follows. One, McMahon, a longshoreman, had been a member and "shop steward" of one of the locals of the original International Longshoremen's Association; but he had resigned, had joined "AFL-ILA," and had been employed on Pier 32 by the Moore-MacCormack Line. The longshoremen at that pier who were members of the "Independent" refused to work with McMahon and struck. He was then discharged and the striking members went back to work. However, McMahon picketed the pier, wearing a tabard with the customary legend; and the drivers of most of the trucks that fetched shippers' goods to and from Pier 32, who were members of "807," refused to cross McMahon's picket line, in protest against his discharge. Thereupon the "Independent" refused to serve any trucks driven by members of "807," at any of the piers in the Port, which resulted in an almost complete tie-up. This situation induced the petitioner to bring the proceeding here

in question; the first step in which was the ex parte injunction, disobedience of which is the subject of this appeal. After the order was obtained the longshoremen belonging to the "Independent" went on a general strike all over the Port.

Nearly all the respondents deny that they knew of the terms of the order, which forbade, not only the conduct described, but allowing it to continue after the order had been entered; but we shall assume, arguendo, that there was enough evidence to support a finding, not only that they did learn of it, but that they either actually counselled or directed the men to continue to refuse to serve the trucks, and eventually to strike against the "Association." Although there is nothing in the record to show that the "Association" had any contract with the trucking companies, or that the shippers of goods to and from the piers did not deal directly with them, it is common ground that the "Association" was "doing business" with the companies, and that the shippers were their "customers." Again, there is no evidence that the "Association" under compulsion of the "Independent" broke off any business that it was doing with the trucking companies, or that the shippers did the same. Indeed, it does not appear that there were no other than "807" drivers available to carry goods to the piers; but it is to be assumed that there were not as many available as were necessary, so that the "Independent's" refusal to serve the "807" drivers as we have said effected a substantial tie-up of the Port, before the strike which occurred after the ex parte injunction had been granted.

The evidence is that the refusal to serve the trucks was a reprisal and retaliation against the "807" drivers for their refusal to cross McMahon's picket line; but obviously, both the drivers' refusal at Pier 32 and the longshoremen's refusal to serve the trucks at all the piers were steps in the contest for control of the Port, because it will be remembered that "807" was an affiliate of "AFL," like "AFL-ILA."

The judge told the jury that the refusal to serve the trucks, taken independently of the strike, was unlawful, if its "object was to force the employers of the men working on the piers to cease doing business with trucking concerns employing 807 drivers"; or if it had the "object" of forcing "customers of the trucking concerns employing 807 drivers to cease doing business" with them. In that case they should convict; but if on the other hand they found that the strike was not a subterfuge to cover the refusal, they should acquit. We are therefore to assume that the jury found that the strike was a "subterfuge"; and that they had acted upon the ruling that the refusal to serve the trucks was of itself a disobedience of the order. We shall for the moment assume that whatever was a violation of § 8 (b) (4) (A), was disobedience of the order and address ourselves to whether the refusal was such a violation. It was not, we think, within the three most recent decisions of the Supreme Court construing the section.[3]

[3] *National Labor Relations Board* v. *International Rice Milling Co.*, 341 U. S. 665. *National Labor Relations Board* v. *Denver Building & Construction Trades Council*, 341 U. S. 675. *International Brotherhood of Electrical Work-*

In the first place it was *not a "secondary boycott" in the usual meaning of that term; for that presupposes a labor dispute between the employees of one employer, with whom another employer has business relations, as a customer, or as the source of his material, or the like.* It further presupposes that the employees of the second employer, wishing to make common cause with those of the first, strike, or threaten to strike, against their own employer, unless he will discontinue his relations with the first, by this means putting pressure on the first to come to terms with his own employees. Section 8 (b) (4) (A) does indeed go further than that; for in the three decisions that we have cited, the employees were not helping the employees of another employer in a dispute between them and him. Nor had they any dispute with their own employer as to the conditions of work or bargaining representative. On the contrary, their only "object" was to promote the general solidarity of unionism by refusing to work with non-union men, even though these were in a different craft from theirs. In the case at bar it is true that the "807" drivers were in a different craft from the longshoremen; but the "object" of the "Independent's" refusal to serve their trucks was not to advance the union solidarity, but a move against "807" for taking part in the dispute between itself and "AFL-ILA." If this was within the statute *it means that a union may not advance its own cause in a dispute with another*

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ers v. *National Labor Relations Board*, 341 U. S. 694. *Local 74* v. *National Labor Relations Board*, 341 U. S. 707.

to gain representation, if the step it takes causes a cessation of business between its employer and a third person, or between two third persons. It is one thing to say that such interference is unlawful when its "object" is the promotion of unionism in general, and a very different thing to forbid such a sanction as part of the contest for control. We start therefore with the premise that, if the section goes so far, it ought to appear very plainly in the text, and we do not think that it does.

Turning then to the text, we are to ask whether it was an "object" of the "Independent's" refusal to serve the trucks to force the "Association" "to cease doing business with the trucking concerns" or to force "customers" of "the trucking concerns" to "cease doing business" with them. It is indeed true that this was one of the probable, nay perhaps inevitable, consequences of the refusal; but the liability imposed by the section is much more limited than the usual liability for a tort, which extends to any damage that the tortfeasor should reasonably have expected to result from his act. All strikes and "concerted refusals" to work involve some cessation of business; that is the only sanction they can have. When Congress limited the wrong to occasions when the cessation was an "object" of the conduct, it excluded much indeed that the ordinary law of tort would have included. If it had not done so, it would have made nearly all strikes unlawful. The "object" of an action is the concluding state of things that the actor seeks to bring about: that which satisfies his aim. Hence it is a term relative to the whole sequence

of steps that he proposes; and it does not apply to those that are only intermediate to it. If I wish to enter my house, but can do so only by passing through my garden, my "object" is to enter the house, and it is not a subsidiary "object" to pass through the garden. On the other hand, if I find the garden gate locked, and I take out my key, the "object" of my doing so is to open the gate, though it is still only a step towards entering the house. So in the case at bar, if the respondents' refusal to serve the trucks was merely to cause a cessation of business between the "Association" and the trucking companies or between those companies and their customers, that may have been within the section, though not even that is perfectly certain as will appear. On the other hand, if the refusal was a part of the struggle for control of the Port, that was the only "object" in the sense that that term is used in the section, unless it is to cover all acts in a labor dispute that are known and intended to result in a cessation of business between others. When therefore the judge left no question to the jury, except whether the strike was a subterfuge for continuing the refusal, it necessarily followed, regardless of whether the refusal was a step or move in the contest for power, that it was within the section. With that we do not agree for the reasons we have given. It was not within the section unless it affirmatively appeared that the refusal was not part of the struggle; and that did not appear from the fact that it was an act of reprisal. Reprisals are a customary part of all sorts of warfare. Indeed, not only might it be a move in the con-

test; but it almost inevitably was one, for the "Independent" had no dispute with the trucking companies, or for that matter with the "Association" itself.

We have just said that it is not perfectly certain, even though the "object" of the refusal had been to break up the business of the "Association" or the "customers" with the trucking companies, that the plaintiff would have proved his case. It so happens that in all the three cited decisions the union forced its employer to put a subcontractor off the job; it did not merely refuse to assist the work of the nonunion men. We do not say that it should make a difference whether the cessation of business between third parties is brought about without the meditation of one of the parties affected; but we do wish to leave that question undetermined, and that we may for the reasons we have tried to state.

The only remaining question is whether if the respondents' conduct was not a violation of the section, it necessarily follows that it was not in disobedience of the order, because we of course agree that the order had to be obeyed, whether it was right or wrong. In the statement of the "objects" that made the conduct unlawful the order followed the language phrase of subsection A: that is, the ban was upon forcing an employer "to cease doing business with any other person." It only substituted the names of the "Association," the trucking companies and their "customers"—presumably the shippers. We do not forget the recital that there was "reasonable cause to believe" that the respondents had violated the section; but that left open what mean-

ing the court ascribed to the words that had been lifted without change from the section. "Object" and "doing business" the order did not attempt to define; and, dealing as we are with a criminal prosecution, we must assume that no more was forbidden than the section itself forbade.

It follows from what we have said that the offence was not proved, because the plaintiff did not show that the refusal was not a part of the struggle for power in the Port; as indeed it appears inevitably to have been. We do not say that if it had been shown to have had no connection with that struggle, that is, to have been a mere act of malice not intended to have any effect upon the result, a verdict could not have stood; but the fact was not proved and without that the offence was not proved. Possibly if the cause be tried again it may be proved, but on this record the order must be reversed. There may of course have been criminal incidents accompanying the refusal and the strike; but, if so, their punishment was a matter for the state courts. The losses occasioned to others—the "Association," the trucking companies and their "customers"—by the refusals themselves were, however, incidents for which *per se* the law in its present form does not furnish any relief. Whether it should do so is of course not for us to say.

Order reversed; new trial ordered if the petitioner so desires.

SWAN, *Circuit Judge,* dissenting.

In my opinion the judgments should be affirmed.

JUDGMENT

United States Court of Appeals for the Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 24th day of June one thousand nine hundred and fifty-five.

Present:

Hon. LEARNED HAND,
Hon. THOMAS W. SWAN,
Hon. JEROME N. FRANK,
Circuit Judges.

CHARLES T. DOUDS, REGIONAL DIRECTOR, ETC.,
PLAINTIFF-APPELLEE

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
ET AL., DEFENDANTS-APPELLANTS

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is reversed in accordance with the opinion of this Court.

(S) A. DANIEL FUSARO,
Clerk.

Filed June 24, 1955.

ORDER DENYING REHEARING

United States Court of Appeals
Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 22nd day of July, one thousand nine hundred and fifty-five.

Present:

Hon. LEARNED HAND,
Hon. THOMAS W. SWAN,
Hon. JEROME N. FRANK,
Circuit Judges.

CHARLES T. DOUDS, REGIONAL DIRECTOR OF THE SECOND REGION OF THE NATIONAL LABOR RELATIONS BOARD, FOR AND ON BEHALF OF THE NATIONAL LABOR RELATIONS BOARD, APPELLEE

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, ET AL., APPELLANTS

A petition for a rehearing having been filed herein by counsel for the appellee,

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

A. DANIEL FUSARO,
Clerk.

By RALPH C. CURCIO,
Deputy Clerk.

Filed July 22, 1955.

APPENDIX B

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., 151, 158 (b) (4) (A), are as follows:

Unfair Labor Practices

Sec. 8. * * * (b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other persons; * * *

Prevention of Unfair Labor Practices

Sec. 10. * * * (l) Whenver it is charged that any person has engaged in an unfair labor parctice within the meaning of paragraph (4) (A), (B), or (C) of section 8 (b), the preliminary investigation of such

charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: * * *

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HAROLD B. WILLEY, Cle

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 335.

CHARLES T. DOUDS, Regional Director of the Second Region of the National Labor Relations Board, For and On Behalf of the National Labor Relations Board, Petitioner,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, and LOCALS 856, 824, 874, 895, 920, 975 and 1258, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT; WILLIAM P. LYNCH, Secretary-Treasurer of Local 791; HAROLD BOWERS, Secretary of Local 824; and WILLIAM ACKALITIS, Business Agent of Local 874.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR RESPONDENTS HAROLD BOWERS AND LOCAL 824 IN OPPOSITION.

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